DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-218353 **DATE:** July 15, 1985

MATTER OF: Morris Guralnick Associates, Inc.

DIGEST:

1. Question of whether difference in point scores assigned to competing technical proposals is significant is within the discretion of the procuring agency.

2. Award of a cost-reimbursement contract to a lower technically rated proposer offering substantial cost savings to the government is within the procuring agency's discretion.

3. Allegation that agency improperly evaluated estimated costs because of delay in awarding contract is unsubstantiated. The agency conducted a detailed cost analysis and the record shows that the travel reimbursement costs which are questioned by the protester were based on an equalized estimate for all offerors throughout the procurement. The other estimate which is questioned concerns an alleged change in the awardee's personnel, which would not have any effect on the agency's labor cost estimate calculations since the agency used normalized hourly rates by job category which are not specific to individual employees.

4. Request for best and final offers which allows less than 2 days to respond is not objectionable where both offerors in the competitive range are able to respond in the required timeframe.

5. Oral request for best and final offers without written confirmation does not provide a basis to overturn an award where no prejudice is shown to have resulted.

Morris Guralnick Associates, Inc. (MGA), protests the award of a contract to Advance Marine Enterprises, Inc. (AME), for design engineering services under request for proposals (RFP) No. N62383-84-R-7054 issued by the Military Sealift Command, Department of the Navy (Navy). MGA asserts that the Navy evaluated the proposals on a different basis from that set forth in the RFP, that the final evaluation was made on the basis of outdated and inaccurate cost proposals, and that MGA was not given a proper opportunity to submit a best and final offer.

We find the protest without merit.

The solicitation was issued on August 13, 1984, with a closing date for receipt of initial proposals of September 7, 1984. A cost plus a fixed-fee contract was contemplated with performance to commence on December 7, 1984, for a period of 1 year with a 1-year option. The RFP's evaluation criteria in section "M" provided that evaluation would be performed separately on the basis of technical ability and cost, with the competitive range to be established on the basis of the separate evaluations.

Three proposals were received by the Navy. By memorandum dated September 13, 1984, a proposal evaluation committee gave MGA's proposal a technical score of 78.8 and AME's proposal a score of 64.5. AME's cost estimate, including fixed fee, was approximately $200,000 lower than MGA's cost estimate (including option years), with both contractor's estimates in the area of $1.5 million. The third proposal received a technical score of 34.3 and was eliminated from the competitive range. On October 3, 1984, AME and MGA were asked to provide clarifications and verifications of their respective proposals by October 23. On November 8, the evaluation committee evaluated the revised proposals which resulted in a final technical score of 79.3 for MGA and 72.4 for AME.

On February 14, 1985, the Navy contract specialist telephoned both offerors and requested that they submit best and final offers by February 15 at 2 p.m. During these telephone conversations, the contract specialist reviewed the offeror's cost estimate with respect to the government's

cost estimates, and both contractors increased their estimates by $100,000 to reflect the government's cost estimate for material, which neither contractor had included in its proposal. Both contractors left their initial price and fee estimates otherwise unchanged, with the result that AME's best and final cost estimate remained just slightly more than $200,000 less than MGA's. The Navy determined that AME's proposal was most advantageous to the government under the RFP award criteria and advised MGA of the contemplated award by letter dated March 11, 1985. MGA protested to our Office and on April 4 the contracting officer determined to make award notwithstanding the protest because the services were urgently required.

Regarding MGA's allegation that the Navy violated the RFP evaluation format, MGA asserts that it was told by the contracting officer, after it received notice of the intended award, that selection had been made on a "cost shoot-out basis," in which the technical evaluation no longer had a role. While the Navy report does not address this assertion, it appears from the record that such a statement simply reflects the fact that the final technical evaluations were sufficiently close so that the Navy determined the two proposals to be substantially equal technically, whereupon cost became the determinant factor. We note that the evaluation criteria do not specify the relative importance of cost versus technical but indicate that both will be considered separately. Where an RFP indicates that cost will be considered without explicitly indicating the relative importance of cost versus technical, it must be presumed that cost and technical considerations will be considered approximately equal in weight. Riggins Co., Inc., B-214460, July 31, 1984, 84-2 C.P.D. ¶ 137. Within this general guideline, we have recognized that in a negotiated procurement selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs may be made and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 C.P.D. ¶ 325. We have upheld awards to lower-priced, lower-scored offerors where, in the agency's considered judgment, the significance of the technical difference was not such as to warrant the higher price in light of the acceptable level of technical competence available at a lower cost. Lockheed Corp., B-199741.2, July 31, 1981, 81-2 C.P.D. ¶ 71.

Here, the contracting officer determined that either offeror would be able to perform acceptably, and MGA's own version of the contracting officer's explanation of the selection process supports the conclusion that the contracting officer found the proposals were essentially technically equal. Accordingly, we do not believe that it was unreasonable for the Navy to decide to make award to AME in order to take advantage of the $200,000 lower cost (approximately a 13-percent differential) despite the approximately 9 percent higher score which MGA received on its technical proposal. In this regard, we have upheld agency determinations that technical proposals were essentially equal despite an evaluation point score differential of as much as 15.8 percent. See Wheeler Industries, Inc., B-193883, July 20, 1979, 79-2 C.P.D. ¶ 41.

Where an agency regards proposals as essentially equal technically, cost or price properly may become the determining consideration in making an award even under an RFP with an evaluation scheme in which cost is of less importance than other evaluation criteria. Lockheed Corp., supra. Indeed, cost cannot be ignored by an agency in any contract selection process. Bell Aerospace Co., 55 Comp. Gen. 244 (1975), 75-2 C.P.D. ¶ 168. Here, the evaluation format treated cost and technical factors as equal. Notwithstanding the language pointed to by the protester in the Federal Acquisition Regulation, 48 C.F.R. § 15.605(d) (1984), which indicates that in awarding a cost-reimbursement contract the cost proposal should not be controlling, the agency is nevertheless correct in considering the indicated cost savings, and in making the award to the apparent low cost offeror where the proposals were substantially equal technically. We have specifically held that the restriction imposed by this language does not preclude the use of estimated costs as the determining factor in awarding a cost-reimbursement type of contract, even when the offeror submitting the lower scored technical proposal is awarded the contract as a result. Medical Services Consultants, Inc., et al., B-203998, et al., May 25, 1982, 82-1 C.P.D. ¶ 493; Southern California Ocean Studies Consortium, 56 Comp. Gen. 725 (1977), 77-1 C.P.D. ¶ 440.

MGA also asserts that the cost figures are inaccurate because of changes in AME's main office location and personnel during the 6-month delay which occurred between the submission of initial offers and the determination to award to AME. We find no merit to this assertion. The method of

analyzing cost realism is within the discretion of the contracting officer; it will not be overturned without a showing that there is no rational basis for the determination, and it may be reasonable even though an in-depth analysis was not made. Grey Advertising, Inc., supra; Medical Services Consultants, Inc., et al., B-203998, et al., supra. Here, the agency conducted detailed analyses of all aspects of the offerors' respective cost estimates and AME's best and final offer was found to be less than 1 percent above the government's estimated cost for its proposal. The primary objection raised by MGA relates to possible increased travel reimbursement costs. These costs were equalized throughout the procurement at $100,000 per year for each offeror, based on a government-provided estimate, applied to all offerors, without differentiating for different home office locations. Since the figure was always an equalized estimate, it would not have changed in any event. Regarding MGA's other assertion, that AME's labor costs may have changed due to personnel changes during the delay, the Navy's labor cost analysis was based on a Defense Contract Audit Agency audit which applied normalized wage rates to the job categories included in the solicitation. These rates are dependent on job category classification and are not specific to listed individual employees; thus, personnel changes would not affect the validity of the labor cost realism calculations. We conclude that the Navy's cost realism analysis had a reasonable basis.

Finally, MGA asserts that the request for best and final offers was defective because it did not allow sufficient time for preparation of such an offer, it was not done in writing, and that AME was given a longer time to respond. With respect to the final argument, the record shows that both offerors were contacted by telephone on February 14 and given the same information and deadline for submission of best and finals. We find no support for MGA's speculation that there was dissimilar or unequal treatment. Regarding the short time allowed for submission of the best and final offer, we have held that an oral request for best and final offers which allowed less than a day to respond was not exceptionable, as long as the agency was not arbitrary in its treatment of offerors, and offerors were able to respond in time to the request for best and final offers. Martin Widerker, Eng., 55 Comp. Gen. 1295 (1976), 76-2 C.P.D. ¶ 61.

This is the situation in the present case. The record discloses that, despite the protester's allegation that he was merely asked to confirm his previous offer, the contract

specialist's memorandum documents a full review of all aspects of the proposal with both offerors, and an opportunity for both to revise their offers. At most, we are presented with a factual dispute concerning the substance of the request for best and final offers with only the conflicting statements of the protester and the procuring agency as evidence. Faced with such a conflict, we find that the protester has not met its burden of proof. Ikard Mfg. Co., 63 Comp. Gen. 239 (1984), 84-1 C.P.D. ¶ 266.

Concerning the agency's failure to make the request in writing, or follow up with a written request, we have held that oral requests are permissible, and while they should be confirmed in writing, the failure to issue such a written confirmation affords no grounds to reverse an award absent a showing of prejudice. Technical Assistance Group, Inc., B-211117.2, Oct. 24, 1983, 83-2 C.P.D. ¶ 477; Harris Corp., B-192632, Apr. 5, 1979, 79-1 C.P.D. ¶ 235.

We deny the protest.

for Harry R. Van Cleve
General Counsel